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*THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

W.A.No.313 OF 2001

% 01-09-2005

The General Manager, Singareni Colleries Co.Ltd.,Kalyanikhani.

..... Appellant

Vs.

$ The Presiding Officer, Industrial Tribunal-I, Hyderabad and another.

… Respondents

! Counsel for the Appellant : Sri K. Srinivasa Murthy

^ Counsel for Respondent No.1 : Sri M Panduranga RAo

Counsel for Respondent No.2 : Sri G. Ramachandra Rao

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THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

WRIT APPEAL NO.313 OF 2001

Date: 01.09.2005

Between:

The General Manager, Singareni Colleries Co.Ltd.,Kalyanikhani.

…. Appellant

and

The Presiding Officer, Industrial Tribunal-I, Hyderabad and another.

….. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

WRIT APPEAL NO.313 OF 2001

JUDGMENT: (per the Hon'ble Sri Justice B. Prakash Rao)

This appeal, at the instance of the Management, who filed the writ, is against the order, dated 25.09.2000, dismissing the said writ in W.P.No.3213 of 1994, which was directed against the Award, dated 04.10.1993, passed in I.D.No.63 of 1990 on the file of the Industrial Tribunal-I, Hyderabad (for short 'the Tribunal').

The brief facts, which are necessary for disposal of this appeal, are that the second respondent was working as General Mazdoor category-I in the appellant-Corporation. He sought for allotment of a residential quarter, by an application dated 01.07.1982 for allotting the quarter D-350, III Zone, since it fell vacant due to transfer of occupant, a Watchman, Sri P. Rajaiah, however, according to him, on the express consent given by one of his officers, he got into and occupied the residential quarter No.D-350, III Zone and the house rent allowance has not been collected from him. However, the appellant has initiated action for eviction against the second respondent for occupying such a residential quarter, without any proper allotment. According to the appellant, despite the directions given to vacate the residential quarter, for which he has no right to occupy, the second respondent did not comply with the same and hence it would amount to 'mis-conduct', as contemplated under the Certified Standing Order No.16(1) and therefore his services are liable to be terminated by taking a disciplinary action.

After holding a regular enquiry and due opportunity having provided, the appellant dismissed from services of the second respondent on 31.01.1985, viz. by order dated 25.01.1985. Thereupon, the second respondent sought the dispute to be referred to the Tribunal and the same was taken up by the first respondent as I.D.No.63 of 1990.

After considering the material, as let in by both sides, the first respondent held that the failure to vacate the departmental quarter by the second respondent cannot be termed as 'mis-conduct', as per the Standing Orders, and therefore the imposition of punishment of termination of services is not justified and accordingly passed the award, directing re-instatement of the second respondent into service with full back wages and all other attendant benefits with continuity of service. Hence, the management filed the writ petition.

The main contention advanced by the appellant in the writ petition was to the effect that despite the directions given by its officials to vacate the departmental quarter, the second respondent failed to do so, and therefore such an act amounts to gross disobedience of the directions, which constitute a 'mis-conduct'. However, the learned Single Judge did not find favour with these contentions put forward on behalf of the appellant and held that it would not fall within mischief of 'mis-conduct' and dismissed the writ petition. Hence, the appeal.

After hearing the learned counsel on either side and on perusing the material, the only question that falls for consideration is whether on the facts and circumstances, as a consequence to failure on the part of the employee to vacate the departmental quarter, which has not been allotted, an act of disobedience or non-compliance of the directions given to vacate the same would constitute 'mis-conduct' as per the Standing orders.

Admittedly, the second respondent is an employee and he has not been allotted any departmental quarter, though, however, an application for such allotment was pending with the appellant. According to the employee, the officer concerned has given express consent for occupation, therefore he occupied the same and consequently the house rent allowance has not been demanded or collected. According to the management, there is no allotment, therefore they have given directions to vacate the said quarter, which was not acceded to. As prescribed under the Standing Orders, disobedience of directions given is also a 'mis-conduct' though such an act has not been specifically stated. Hence, disciplinary proceedings have been initiated on the charge of 'mis-conduct' for failure to abide by the directions. It is now well established that no employee has got an enforceable right in respect of the quarter as long as it is not allotted. Even after allotment, there is no right to squat over, on attaining age of superannuation. Further, in the absence of the allotment, he does not possess any right of entry or advance possession. In the circumstances, it cannot be said that merely because the employee has filed an application and therefore pending its' consideration or expecting any such allotment, he cannot walk into. Though it has been stated that he was allowed to occupy and any such consent was given by the employer, there is absolutely no such material produced and further, the management has denied of giving any such consent. Further, as per

norms, the allotment is to be based on seniority amongst employees. Whereas, the present employee is far junior in the list, who could not have got the allotment. Thus, *ex facie* such an action would also amount to a criminal trespass. Merely because, no house rent allowance was being paid does not validate an unauthorized occupation. In these circumstances, the only conclusion which we can arrive at is that the employee, having not been allotted the departmental quarter, is not entitled to occupy the same. And, the management has consequent to illegal occupation, issued directions to vacate the same, which was not complied and the employee continued to occupy. With this back drop, it cannot be said that the directions issued are not valid or legal. Therefore, non-adherence to lawful directions issued by the management squarely fall within the mischief of the Standing Orders, for a clear act of misconduct, for which the management has rightly initiated disciplinary action. Thus, the findings of the tribunal that it does not amount to mis-conduct is not sustainable. For these above reasons, we hold that such an act would amount to 'mis-conduct'.

In the circumstances, the writ appeal is allowed. The impugned award passed by the first respondent is set aside, upholding the action of the management in terminating the services of the second respondent as valid. However, in the circumstances, the employee is given time of three months from today for vacating the quarter. On failure to do so, it shall be open for the management to take appropriate action against the second respondent in accordance with law. There shall be no order as to costs.

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(B.PRAKASH RAO.J)

(DR.G.YETHIRAJULU.J)

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Dt.01.09.2005

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